

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA DAVIS BLAND,

Petitioner,

v.

WARDEN,

Respondent.

No. 2:21-cv-0518 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 2, 2021, the court ordered petitioner to show cause why his petition should not be dismissed for failure to exhaust his state court remedies. (ECF No. 8.) Specifically, petitioner was instructed to inform the court if he had presented the claims in his petition to the California Supreme Court and to provide a copy of any ruling from that court. (*Id.* at 3.) The court made this order as a result to petitioner's statement that he did not raise either of the claims in the present petition on appeal. (*Id.*)

On November 19, 2021, petitioner filed a response to the order to show cause. (ECF No. 9.) This response simply states that petitioner exhausted state remedies and includes a single page ruling from the California Supreme Court. (*Id.* at 1-2.) The response does not refute petitioner's previous statement that he did not raise either of the claims in the present petition with the California Supreme Court, nor does petitioner provide any evidence which shows these claims were exhausted. The response by petitioner simply shows that the California Supreme

1 Court denied petitioner's petition for writ of habeas corpus. (See Id. at 2.) It does not show that
2 petitioner's claims were included in this petition or otherwise exhausted.

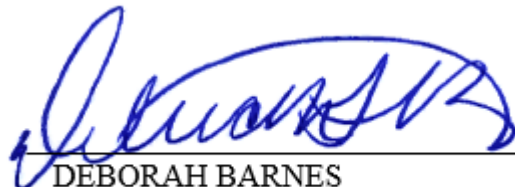
3 Given the above, it appears the petitioner failed to exhaust the claims included in his
4 petition as is required by 28 U.S.C. § 2254(b)(1). Petitioner previously stated that the claims in
5 the present petition were not exhausted (ECF No. 1 at 6-8) and petitioner's response to the court's
6 order does not refute this or provide evidence to the contrary (see ECF No. 9). Petitioner has
7 failed to show cause why this action should not be dismissed. Accordingly, it will be
8 recommended that this action be dismissed without prejudice for failure to exhaust the claims
9 raised in the petition as required by 28 U.S.C. § 2254(b)(1).

10 For the reasons stated above, the Clerk of the Court is ORDERED to randomly assign a
11 district judge to this action.

12 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See
13 Local Rule 110; Fed. R. Civ. P. 41(b).

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
16 after being served with these findings and recommendations, petitioner may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 "Objections to Magistrate Judge's Findings and Recommendations." Petitioner is advised that
19 failure to file objections within the specified time may waive the right to appeal the District
20 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: February 24, 2022

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23 
24 DEBORAH BARNES
25 UNITED STATES MAGISTRATE JUDGE
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